

WEST VIRGINIA SECURITIES COMMISSION

STATEMENT OF POLICY

Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders

June 28, 2010

This Statement of Policy is adopted by the West Virginia Securities Commission pursuant to the authority of the Securities Commissioner of the State of West Virginia granted under Chapter 32 of the West Virginia Code. The West Virginia Securities Commissioner has determined that the following Statement of Policy relating to underwriting expenses, underwriter's warrants, selling expenses and selling security holders is consistent with public investor protection and is in the public interest. The Commissioner may waive any requirement of this Statement of Policy for good cause, as he may determine.

I. APPLICATION

This Statement of Policy applies to all applications to register by coordination or by qualification.

II. DEFINITIONS

The terms used in this Statement of Policy are defined pursuant to the West Virginia Securities Commission Statement of Policy regarding Corporate Securities Definitions unless specifically stated otherwise within this Statement of Policy, or when the context clearly indicates otherwise.

III. GROUNDS FOR DENIAL OF SECURITIES REGISTRATIONS

The Commissioner may deny the registration of securities if:

- A.** The underwriting expenses exceed seventeen percent (17%) of the gross proceeds from the public offering,
- B.** The selling expenses of the offering exceed twenty percent

(20%) of the gross proceeds from the public offering, or

- C. Selling security holders are offering more than ten percent (10%) of the securities for sale in the public offering.

IV. SELLING SECURITY HOLDERS.

The Commissioner may permit a public offering or sale of securities that includes selling security holders offering more than ten percent (10%) of the securities for sale in the public offering if either of the following apply:

- A. The prospectus discloses the amount of selling expenses that the selling security holders will pay.
 - 1. Selling security holders offering at least ten percent (10%) but not more than fifty percent (50%) of the registered securities pay a pro rata share of all selling expenses of the public offering, excluding the legal and accounting expenses of the public offering, and
 - 2. Selling security holders offering more than fifty percent (50%) of the registered securities pay a pro rata share of all selling expenses of the public offering.
- B. With the exception of underwriter's or broker-dealer's compensation, the selling security holders have a written agreement with the issuer that was entered into in an arm's length transaction, under which the issuer agreed to pay all of the selling security holders' selling expenses.

V. RESTRICTIONS ON WARRANTS GRANTED TO UNDERWRITERS

Warrants granted to underwriters are subject to the following restrictions:

- A. The underwriter must be a managing underwriter.
- B. The public offering must be either a firmly underwritten offering or a "minimum-maximum" offering. Options or warrants may be issued in a "minimum-maximum" public offering only if:

1. The options or warrants are issued on a pro rata basis, and
 2. The "minimum" amount of securities has been sold.
- C. The exercise price of the warrants shall be at least equal to the public offering price.
- D. The number of shares covered by the underwriter's options or warrants must not exceed ten percent (10%) of the shares of common stock actually sold in the public offering.
- E. The options or warrants shall not be exercisable more than five (5) years after the public offering is completed.
- F. The options or warrants shall not be exercisable during the first year after the public offering is completed.
- G. Option or warrants shall not be transferred, except:
1. To partners of the underwriter, if the underwriter is a partnership.
 2. To officers and employees of the underwriter, who are also shareholders of the underwriter, if the underwriter is a corporation, or
 3. By will, under the laws of descent and distribution, or by operation of law.
- H. The warrant agreement shall not allow for a reduction in the exercise price of the options or warrants resulting from the issuer subsequently issuing shares except if the issuer issues shares under:
1. a stock dividend or stock split, or
 2. a merger, consolidation, reclassification, reorganization, recapitalization, or sale of assets.

VI. PROHIBITED UNDERWRITING EXPENSES

Underwriting expenses shall not include financial consulting or financial advisory agreements with the underwriter payable at

the time the services are rendered, provided that the issuer entered into the agreement at least twelve months before the issuer filed the registration statement with the Securities and Exchange Commission.

VII. VALUATION OF UNDERWRITER'S WARRANTS

Underwriter's warrants shall be valued according to the following formula:

$$\frac{a - b}{2} \times \frac{c}{d}$$

where

a equals 165% of the aggregate offering price;

b equals the exercise price multiplied by the number of shares offered to the public;

c equals the number of shares underlying the warrants; and

d equals the number of shares offered to the public.

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities

June 28, 2010